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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Implementation of Sections 11  
and 13 of the Cable Television  
Consumer Protection and  
Competition Act of 1992

Horizontal and Vertical Ownership  
Limits, Cross-Ownership Limita-  
tions and Anti-Trafficking  
Provisions

MM Docket No. 92-264

To: The Commission

COMMENTS OF  
TRIBUNE REGIONAL PROGRAMMING, INC.

Tribune Regional Programming, Inc. ("TRP"), by its attorneys, hereby submits its comments in the above-captioned proceeding. Specifically, TRP urges the Commission to preserve its "local programming exception" to its cross-ownership rules in order to foster the development of local and regional programming services.

TRP is a subsidiary of Tribune Broadcasting Company. TRP's sister corporation, ChicagoLand Television News, Inc. ("CTN") is the operator of ChicagoLand, a 24-hour regional news and public affairs programming channel serving television viewers throughout the Chicago market. ChicagoLand's programming is locally produced in CTN's studios. It is then transmitted over multipoint distribution service ("MDS") facilities licensed to

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ChicagoLand Microwave Licensee, Inc. ("CML"),<sup>1</sup> another sister corporation, to cable television systems throughout the Chicago market for distribution to cable subscribers.

In its Report and Order in Gen. Docket No. 90-54, 68 R.R.2d 429 (1990) ("Report and Order"), the Commission amended its rules to foster a new "wireless cable" service by restructuring the regulations of the Multipoint Distribution Service, the Private Operational Fixed Service, and the Instructional Television Fixed Service ("ITFS"). In doing so, the Commission generally prohibited a cable system from acquiring an MDS station whose service area overlaps with the cable system's franchise area. Report and Order, ¶ 4. In the notes to its new rule, the Commission explained that the prohibition was intended to bar "any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the [MDS licensee] and the cable television company." 47 C.F.R. § 21.912, n. 1. However, in subsequent proceedings, the Commission adopted an exception to its general prohibition, allowing one MDS or ITFS channel in an MDS protected service area to be used for the delivery to multiple cable headends of locally produced programming not broadcast on a television station in that area. Second Report and Order in Gen. Docket No. 90-54, FCC 91-302, ¶ 41; 47 C.F.R. § 21.912(e).

There is no common ownership between TRP, CTN, or CML and any cable systems. Nor do any of them manage any cable

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<sup>1</sup> CML is the licensee of MDS stations WOF49, Chicago, Illinois, and WGW344, Waukegan, Illinois.

systems. Nonetheless, because CML's facilities are used to distribute programming to cable systems, there is a contractual business relationship between an MDS licensee and cable systems - a relationship that would be prohibited by the rules but for the local programming exception in Section 21.912(e) of the Commission's Rules.<sup>2</sup>

Section 11 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act" or the "Act") prohibits a "cable operator"<sup>3</sup> from holding an MMDS<sup>4</sup> license. The Act also provides that the Commission shall grandfather existing cross-ownership and may waive the cross-ownership prohibition where it determines that cross-ownership will ensure that all significant portions of a franchise area are able to receive video programming.

The Commission recognizes in its combined Notice of Proposed Rulemaking and Notice of Inquiry in this proceeding that

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<sup>2</sup> In February of 1992, the Commission confirmed that CML's use of its MDS facilities falls within this local programming exception, granting it specific authority to use its facilities to distribute programming. Letter of Robert James, Chief, Domestic Radio Branch, Common Carrier Bureau to ChicagoLand Television, Inc., dated February 26, 1992.

<sup>3</sup> While CTN contracts with cable operators to provide program service, those contracts do not make it a "cable operator" for purposes of the Communications Act of 1934, as amended (the "Communications Act"). Similarly, CML and its sister corporations do not come within the definitions of "cable service" or "cable system" in Section 602(6) and (7) of the Communications Act.

<sup>4</sup> Although the Act refers only to multichannel multipoint distribution service ("MMDS"), and the Commission in this proceeding refers only to MMDS and multichannel video program service in its discussion, it is assumed the Commission includes MDS stations in its inquiry, as Section 21.912(e) of its Rules applies to both MDS and MMDS stations.

its recently adopted cable/MMDS cross-ownership rule was intended to serve the same purpose as Section 11. Thus the Commission's tentative conclusion is that those rules fulfill the 1992 Cable Act's mandate with respect to MMDS. The Commission asks, however, whether the existing public interest waiver standards for cable/MMDS situations, including the local programming exception, are sufficient for purposes of the Act.

TRP submits that the local programming exception is consistent with Section 11 and should be reaffirmed by the Commission.

The 1992 Cable Act prohibits a "cable operator"<sup>5</sup> from being an MMDS licensee. The Act does not impose any restriction on contractual relationships between cable operators and independent MDS (or MMDS) licensees. Thus the prohibition of Section 11 is not as broad as the proscription contained in the Commission's own rules. Accordingly, the Act certainly does not require the Commission to rescind or otherwise modify its local programming exception.

Since the Commission has recently found the local programming exception to be in the public interest, TRP submits that there is no reason for the Commission to reconsider that

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<sup>5</sup> The term "cable operator" is defined in Section 602(5) of the Communications Act as a person

(A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

exception on its own. The exception is necessary if TRP and others are to develop local and regional programming services in other markets. ChicagoLand, which has been operational for just over a month, fills a need for expanded local news and public affairs programming. TRP will use the experience gained from ChicagoLand in formulating plans to develop and provide similar services elsewhere. Such services may require an MDS/MMDS channel for distribution to cable headends, since other means of distribution, such as point-to-point microwave, low power television stations, satellite, or fiber optics are often too expensive or technically inadequate. Without the local programming exception in the rules, ChicagoLand, and some other programming services that fall within that carefully-drawn exception, would have no viable means of distribution.

TRP urges the Commission to retain the local programming exception in Section 21.912(e) of its Rules in implementing Section 11 of the 1992 Cable Act.

Respectfully submitted,

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February 9, 1993